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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER

KIM, CHONG HWA

ART UNIT

PAPER NUMBER

3682

DATE MAILED: 08/16/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/026,499

Applicant(s)

ZHANG ET AL.

Examiner

Chong H. Kim

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 December 2001.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-36 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-36 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

2. Claims 8, 9, 17, 19 and 20 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Claims 8 and 17 recite that the sensor senses the rotation of the motor. Also, claim 19 recites the limitation wherein the sensor is located to directly sense the movement of the first support relative to the second support. Such configurations are not described in the specification as originally filed in the application No. 09/492,636.

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 8, 9, 21, and 22 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 8 and 21 recite the limitation "the control device" in lines 10-11 and 11, respectively. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1-6 are rejected under 35 U.S.C. 102(b) as being anticipated by Rixon et al., U.S. Patent 5,722,302.

Rixon et al. shows, in Figs. 1-8, a control pedal assembly comprising, in combination;

a pair of control pedals (both brake and accelerator pedals), each of the pair of control pedals having a first support 14, an adjustment member 16 and a second support member 18;

a motor 41 connected to the adjustment member and adapted to move the second support member relative to the first support member;

a sensor 84 located on at least one of the pair of the control pedals, the sensor sensing the movement of the second support member relative to the first support member;

a controller member 88 in communication with the sensor to receive signals from the sensor, wherein the controller member is adapted to stop the motor when signals from the sensor indicate that the second member is not moving relative to the first member;

wherein the controller member moves the second support member to a predetermined position when predetermined conditions are met (as described in column 6 lines 9-54);

wherein the predetermined conditions are a manual switch (in control panel 90) and a memory device (the memory button 102);

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wherein the predetermined position is a forward position;

wherein the controller member further includes a control device 90 in communication with the controller member and adapted to prevent movement of the second support member relative to the first support member when engaged; and

wherein the controller member is adapted to automatically move the second support member in a forward direction relative to the first support member to a predetermined position when predetermined conditions are met (as described in column 6, lines 42-54).

7. Claims 8 and 9 are rejected under 35 U.S.C. 102(b) as being anticipated by Rixon et al., U.S. Patent 5,722,302.

Rixon et al. shows, in Figs. 1-8, a control pedal assembly comprising, in combination; first and second control pedals (both brake and accelerator pedals), each control pedal comprising a first support 14, a screw 48 secured to the first support, a nut 32 threadably engaging the screw and adapted to axially move along the screw upon rotation of the screw, and a second support operatively connected to the nut for fore-aft movement of the second support relative to the first support upon axial movement of the nut along the screw;

a control system (as shown in Figs. 6 and 8) including at least one motor 41 operatively connected to the screws to selectively rotate the screws and axially move the nuts along the screws, a sensor 84 carried by one of the first and second control pedals, to sense rotation of one of the motor and the screw, and a controller 88 in communication with the sensor to receive signals from the control device; and

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wherein the controller is adapted to automatically stop the motor when signals from the sensor indicates that at least one of the motor and the screw is not rotating.

8. Claims 10-18 are rejected under 35 U.S.C. 102(b) as being anticipated by Rixon et al., U.S. Patent 5,722,302.

Rixon et al. shows, in Figs. 1-8, a control pedal comprising, in combination;

a first support 14;

a screw 48 secured to the first support;

a nut 32 threadably engaging the screw and adapted to move axially along the screw upon rotation of the screw;

a motor 41 operatively connected to the screw to selectively rotate the screw;

a second support 18 operatively connected to the nut for fore-aft movement of the second support relative to the first support upon axial movement of the nut along the screw;

a control system (as shown in Figs. 6 and 8) including a sensor 84 adjacent one of the first support and the second support, to sense movement of the second support relative to the first support and a controller 88 in communication with the sensor to receive signals from the sensor;

wherein the sensor is a potentiometer;

wherein the controller is adapted to determine a position of the second support relative to the first support based on signals from the sensor and to automatically stop the motor when the second support reaches a predetermined position relative to the first support (as deduced from the disclosure in column 6 lines 42-54);

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wherein the controller is adapted to determine a position of the second support based on signals from the sensor and to automatically stop the motor when the second support reaches a desired end of travel relative to the first support (as deduced from the disclosure in column 6 lines 42-54);

wherein the controller is adapted to automatically stop the motor when signals from the sensor indicates that the second support is not moving relative to the first support;

wherein the controller is adapted to automatically move the second support in a forward direction relative to the first support to a predetermined position when predetermined conditions are met (as described in column 6 lines 9-54);

wherein the controller member further includes a control device 90 in communication with the controller member and adapted to prevent movement of the second support member relative to the first support member when engaged;

wherein the sensor senses rotation of the one of the motor and the screw; and

wherein one of the first support and the second support carrying a pedal 26, 62.

9. Claim 21 is rejected under 35 U.S.C. 102(b) as being anticipated by Rixon et al., U.S. Patent 5,722,302.

Rixon et al. shows, in Figs. 1-8, a control pedal assembly comprising, in combination; first and second control pedals (both brake and accelerator pedals), each control pedal including a first support 14, a screw 48 secured to the first support, a nut 32 threadably engaging the screw and adapted to axially move along the screw upon rotation of the screw, and a second

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support 18 operatively connected to the nut for fore-aft movement of the second support relative to the first support upon axial movement of the nut along the screw;

a control system (as shown in Figs. 6 and 8) including at least one motor 41 operatively connected to the screw on one of the first support and the second support to selectively rotate the screw and axially move the nut along the screw, at least one sensor 84 carried by one of the first control pedal and the second control pedal to sense rotation of the screw of one of the first control pedal and the second control pedal, and a controller 88 in communication with the control device to receive signals from the sensor; and

wherein the screws of the first and second control pedals are operatively connected to the motor in series such that the screw of the second control pedal is connected to the motor and the screw of the first control pedal is connected to the screw of the second control pedal.

Double Patenting

10. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

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11. Claims 1-7, 10-16, 18, and 21-36 are rejected under the judicially created doctrine of double patenting over claims 1-22 of U. S. Patent No. 6,352,007 since the claims, if allowed, would improperly extend the "right to exclude" already granted in the patent.

The subject matter claimed in the instant application is fully disclosed in the patent and is covered by the patent since the patent and the application are claiming common subject matter, as follows: a control pedal assembly comprising a pair of control pedals, each having first and second support members, and adjustment member; a motor, two sensors to sense the movement of the first support relative to the second support member (or sense the rotation of the screw directly); a control system including a controller member and a control device communicating with the sensor; predetermined conditions including an ignition switch, an open door, trunk lid, a manual switch, and a memory device; the sensor being a Hall effect device, an inductance sensor, a potentiometer, or an encoder; and the control system including a lock-out switch for manually engage or disengage the system.

Furthermore, there is no apparent reason why applicant was prevented from presenting claims corresponding to those of the instant application during prosecution of the application which matured into a patent. See *In re Schneller*, 397 F.2d 350, 158 USPQ 210 (CCPA 1968). See also MPEP § 804.

Claim Rejections - 35 USC § 103

12. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having

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ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

13. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Rixon et al.

Rixon et al. shows, as discussed above in the rejection of claim 1, the control pedal assembly comprising the pair of control pedals, but fails to show a second sensor.

It would have been obvious to include a second sensor since such a modification would have involved a mere duplication of parts which is generally recognized as being within the level of ordinary skill in the art. *In re Harza*, 124 USPQ 378.

Conclusion

14. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Nishikawa et al., U.S. Patent 4,661,752

Saitoh, U.S. Patent 4,809,190

Elton, U.S. Patent 5,996,438

Toelke et al., U.S. Patent 6,247,381 B1

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Chong H. Kim whose telephone number is (703) 305-0922. The examiner can normally be reached on Monday - Friday; 9:00 - 6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David A Bucci can be reached on (703) 308-3668. The fax phone numbers for the


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organization where this application or proceeding is assigned are (703) 305-7687 for regular communications and (703) 305-7687 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1113.

CHK

August 9, 2002



Chong H. Kim
Primary Examiner
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